

**METROPOLITAN NASHVILLE-DAVIDSON COUNTY
TRANSPORTATION LICENSING COMMISSION**

Minutes of

March 25, 2008

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in regular session on this date at the Metropolitan Courthouse. The Commissioners present were Vice Chair Duane McGray and Commissioners Jennifer Brundige, James Utley, and Ed Whitmore (4). Also attending were Metro Legal advisor Jon Michael; Commission staff members Walter Lawhorn, Milton Bowling and Lisa Steelman; and Brian McQuiston, Director-Executive Secretary to the Commission.

Vice Chair Duane McGray called the meeting to order and led the Pledge of Allegiance. He read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

TAXICAB DRIVER DISCIPLINARY HEARING: ABDIRIZAK WARSAME

Director McQuiston reported that a complaint had been received from Brenda Dillon, who is blind, concerning improper treatment by the driver of American Music City taxicab number 53, subsequently identified as Abdirizak Warsame.

Mrs. Dillon appeared before the Commission, with witness Carla Conte. Mrs. Dillon explained that she had been at a meeting on February 29, and had called to request transportation from AccessRide. She stated that, because there had been no AccessRide vehicles available, MTA had contacted American Music City Taxi to provide a taxicab under the contracted "overflow" program. She stated that, when the driver called to her from across the parking lot, she had told him that she was blind and asked him to assist her to the taxicab by giving her his arm. Director McQuiston explained that this was the "sighted guide" technique taught to drivers during their mandatory annual hospitality training sessions. Mrs. Dillon stated that, instead of using this technique, the driver had grabbed the end of her white cane, and pulled her across the parking lot.

Mr. Warsame appeared before the Commission. He stated that he had been a driver for several years, and had always provided good service to passengers with disabilities. He stated that he had driven Mrs. Dillon herself in the past, without incident. He stated that he had just had a bad day, and admitted that he had made a mistake. American Music City Taxi owner Johnny White stated that Mr. Warsame had been a good driver for his company. He expressed concern that training could be improved. Mrs. Dillon and Ms. Conte responded that Mr. Abdirizak had responded to Mrs. Dillon's request by telling Mrs. Dillon not to touch him. Mrs. Dillon added that Mr. Abdirizak also refused to identify himself or his cab number, but that she had heard him respond when called on the radio. **Commissioner James Utley** moved to revoke Mr. Warsame's taxi driver permit. **Commissioner Jennifer Brundige** seconded, and the motion was approved (3-0).

APPROVAL OF MINUTES

The minutes of the February 26, 2008 meeting were approved. Director McQuiston reported that Diamond Taxi's certificate of public convenience and necessity had been reinstated on February 29, after the company had complied with all requirements imposed by the Commission at the February 26 meeting.

APPLICATION FOR WRECKER DRIVER PERMIT: WILLIAM K. BRASHEAR

Director McQuiston reported that Mr. Brashear had applied for a permit in January, but had listed "American Towing, Incorporated" as the company where he would be employed; because "American Towing, Incorporated" was not a licensed wrecker service, Mr. Brashear had been informed that his application could not be considered. The director stated that Mr. Brashear had again applied for a permit on March 7, to drive for Action Transport Services. He provided copies of the application, including the required background check, to Commissioners. The director noted that Mr. Brashear had been cited by Inspector Bowling for operating a wrecker without a wrecker driver permit on March 4, 2008, only a few days after Action Transport Services had been issued a license.

Inspector Bowling noted that Mr. Brashear had not fully disclosed his criminal history in his application. The inspector reported that, when he stopped Mr. Brashear at 3314 Nolensville Road, Mr. Brashear had told him that he did not have to have a permit, because he was operating out of Clarksville. Inspector Bowling stated that he had then pointed out that the wrecker had a 2008 wrecker decal, and that he needed a wrecker driver permit; Mr. Brashear had responded that he would operate in Davidson County anyway. The inspector stated that he had asked Mr. Brashear to get a permitted driver to come and drive the wrecker, but Mr. Brashear had refused. Inspector Bowling stated that he had issued Mr. Brashear a citation for operating a wrecker without a wrecker driver permit.

Mr. Brashear appeared with attorney Michael McGovern. Mr. McGovern asked Inspector Bowling if he had checked to see what company was issued the wrecker decal on Mr. Brashear's wrecker; Inspector Bowling responded that the wrecker was lettered "Action Towing," but that he did not check the number. Mr. McGovern asked if Inspector Bowling knew where the towed vehicle had been picked up; Inspector Bowling responded that he did not know. Director McQuiston stated that the issue of the vehicle's origin was irrelevant to the charge of operating a wrecker without a wrecker driver permit.

Mr. McGovern asked what was deficient about the criminal record information provided by Mr. Brashear on his application. Director McQuiston read the sections of Mr. Brashear's application related to disclosure of his criminal background, and also read the list of arrests revealed from his criminal background check. Mr. McGovern asked how many of the charges had been dismissed. Director McQuiston responded that it did not matter; the application required the disclosure of all arrests. The director explained that the purpose of a Commission hearing on a driver's application was to allow the applicant to appear and explain his background check, if appropriate, or present witnesses on his behalf. Mr. McGovern expressed concern about the difficulty of remembering the dates of all prior arrests. Inspector Bowling noted that Mr. Brashear had not listed any of his drug-related arrests. Director McQuiston stated that the Commission was not requiring Mr. Brashear to appear for falsifying his application; but was requiring him to appear so that the Commission could decide whether to issue him a wrecker driver permit. Mr. McGovern pointed out that, subsequent to many of the offenses revealed by the background check, the Commission had nevertheless granted him a permit in the past, which had elapsed when he moved out of the County in 2004. **Commissioner Ed Whitmore** noted that most of the violations had occurred

after 2004; Mr. McGovern stated that the more serious violations had taken place before then, and that the Commission had already considered those when it issued his client a permit. Director McQuiston stated that the last application from Mr. Brashear had been sent to the Commission for decision on July 22, 2003. He read from the minutes of that Commission meeting, and noted that the Commission had approved only a ninety-day temporary permit, with a condition to have drug tests sent to the staff. He also noted that the Commission had voiced concern then about Mr. Brashear's lengthy criminal background, and added that his current record was even more extensive. **Vice Chair Duane McGray** stated that one of the Commission's concerns in 2003 had been Mr. Brashear's background of drug-related offenses; and he noted that in 2006 there were two more drug-related arrests. **Commissioner Jennifer Brundige** moved to disapprove Mr. Brashear's application. **Commissioner James Utley** seconded, and the motion passed (3-0).

WRECKER COMPANY DISCIPLINARY HEARINGS:

Action Transport Services: Martha Brashear, company owner, appeared with Mr. McGovern. Director McQuiston reported that the Commission had approved a general wrecker license for the company on February 26, 2008; as a condition of approval the company had been placed on probation for 12 months, through February 25, 2009. He stated that Inspector Bowling had cited William Brashear for operating the wrecker lettered "Action Towing" without a wrecker driver permit on March 4, 2008. The director stated that the ordinance places the burden on wrecker companies to ensure that their drivers are operating within the laws related to wrecker services, and he read Section 6.80.320(B) of the Metropolitan Code:

Each licensee shall be responsible for its employees complying with the laws of the metropolitan government, the State of Tennessee, the United States and the rules and regulations of the commission which reflect on the fitness of such employees to be employed in the operation of the wrecker service, and violations by the employees of the licensee shall be cause for revocation, suspension, probation or failure to renew the license of the licensee and the permits of the drivers or driver helpers.

Mr. McGovern argued that the operation of the wrecker by Mr. Brashear was not a violation of the Metropolitan Code: because the origin of the tow by Mr. Brashear was unknown, it was not a violation of the ordinance. He provided copies of a towing invoice, indicating that the vehicle had been towed from LaVergne. Inspector Bowling pointed out that, according to the invoice provided, the towing company was located in Davidson County; therefore, the company was required to have a license. Director McQuiston added that the company is responsible to ensure that its drivers operating a wrecker in the county have wrecker driver permits.

Vice Chair Duane McGray questioned Mr. McGovern about the invoice. Mr. McGovern stated that it was the invoice corresponding to the unloaded vehicle observed by Inspector Bowling. Inspector Bowling asked if Action Transport Services had any other drivers licensed in Davidson County; Mrs. Brashear answered that it did not. Director McQuiston noted that the only employee listed in the company's application was William K. Brashear, the employee who was cited by Inspector Bowling. **Commissioner Jennifer Brundige** read the ordinance definition of a wrecker driver permit, noting that it related to a driver operating on any roadway in the County. Mr. McGovern stated that this was not a reasonable interpretation; if the ordinance was taken altogether it would be clear that drivers and companies are commingled, so that drivers would not have to have permits unless their companies were

licensed. Director McQuiston stated that Mr. McGovern could not have it both ways; if a wrecker company has a license, then its drivers operating in Davidson County must also have wrecker driver permits. **Commissioner Brundige** pointed out that Mr. Brashear was driving a wrecker licensed in Davidson County. Mr. McGovern responded that the wrecker had just been purchased, and it was not an Action Transport Services vehicle. Inspector Bowling stated that this would place Action Transport Services out of compliance for the wrecker, because wrecker vehicle permits or decals were not transferable. Mr. McGovern acknowledged that this would be a violation.

Commissioner Brundige noted that the company address on the invoice indicated that it was from Action Towing in Joelton, not a Clarksville company as alleged by Mr. Brashear. Mrs. Brashear stated that this was an old invoice. Director McQuiston asked Mrs. Brashear if the wrecker performing the tow was actually an Action Transport Services vehicle; she answered that it was. **Vice Chair McGray** noted that the company had admitted that their wrecker was operating in Davidson County without a decal.

Commissioner Brundige moved to suspend the license of Action Transport Services for six months. **Commissioner Ed Whitmore** seconded, and the motion passed (3-0).

Copeland's Towing and Recovery:

Theresa Copeland, owner of Copeland's Towing and Recovery, appeared before the Commission. Director McQuiston reported that Copeland's Towing and Recovery had been licensed as a general wrecker service for two years. He stated that the Commission had approved the company's request to perform nonconsent towing on February 26, 2008; as a condition of that approval, the company had been placed on probation until December 1, 2008. Inspector Bowling stated that on February 29, 2008 he had stopped a Copeland's Towing and Recovery wrecker driven by Charles Matthews. He stated that he had asked to see Mr. Matthews wrecker driver permit; but that Mr. Matthews instead had handed him an expired wrecker driver permit for Mitchell Copeland. The inspector stated that the company had sent another driver, who had a permit, to retrieve the wrecker. He added that later he had learned that Mr. Matthews' Tennessee driver's license had been suspended. Director McQuiston noted that Section 6.80.320(B) of the Metropolitan Code, which was cited in the Action Transport Services hearing, was applicable, and was the cause for this hearing as well.

Mrs. Copeland admitted that she had made a mistake. She stated that Mr. Matthews no longer worked for the company. **Vice Chair Duane McGray** asked how many drivers the company had working; Mrs. Copeland responded that her husband was the only driver. He asked how she could verify that any potential employee met the necessary requirements; she stated that she did not know. Director McQuiston stated that she should verify that any driver hired by the company had a current wrecker driver permit, and that any wrecker used by the company had a current decal. He stated that drivers should be able to show employers or potential employers their wrecker driver permits. **Vice Chair McGray** suggested that an employer could also require a potential employee to provide a copy of his official driver record; this policy would help the company to reduce its liability risk. Director McQuiston asked how Mr. Matthews could have come into possession of Mr. Copeland's old wrecker driver permit. Mrs. Copeland stated that she had not known about this before, but thought it might have been left in the truck.

Commissioner Brundige moved to rescind the Commission's authorization to perform nonconsent towing for six months. **Commissioner James Utley** seconded, and the motion passed (3-0).

APRIL MEETING SCHEDULE CHANGE:

The Commission agreed to move the monthly meeting for April to April 29.

OTHER BUSINESS

Director McQuiston noted that the Commission had received a copy of a letter from the Davidson County Zone Towing Association, requesting assistance from the Department of Law to expedite the amendment of the wrecker ordinance, in order to adopt the rates approved by the Commission in December and January.

Director McQuiston noted that the preparation of a new ordinance to regulate other passenger vehicles for hire would involve a number of public meetings. He asked the Commission to consider appointing a Commissioner to head a task force to deal with those meetings, and then to make recommendations to the Commission.

There was no further business, and the meeting was adjourned.

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair